REMARKS

The following replies of the applicant are preceded by related comments of the examiner set forth in bold small type.

Claim 15 is rejected under 35 U. S. C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The antecedent basis for "the jurors" has not been clearly set forth.

The claim has been amended.

3. Claims l-4, and 6-13 are rejected under 35 U. S. C. 102(e) as being anticipated by Gordon et al. (US Patent Application Publication 2001/0053967 Al; hereinafter Gordon)

Regarding claim 1, Gordon discloses a method comprising enabling electronic posting of a performance that expresses a position of a party on an issue, storing the posted performance digitally (para 61), enabling at least two different individuals at two different locations to observe at least portions of the performance (para 29), and enabling each of the individuals to post electronically feedback relating to the persuasiveness of the performance of the party with respect to the issue (para 111).

The applicant disagrees. Claim 1 has been amended to make clear that the posting is enabled "from a telephone". Posting oral arguments by telephone enables a lawyer, for example, to quickly, extemporaneously, without assistance, at any time, and from virtually any place in the world recite his argument and post it for consideration and feedback by others.

As the examiner has recognized in his rejection of claim 5, there is nothing in Gordon that discloses or suggests enabling posting from a telephone. In fact, Gordon describes a process in which "the jury scientist and the trial lawyers work together" (para. 0060). Such a process does not envision the convenience and technical ease of use of the posting from a telephone recited in claim 1. Nor does it envision the liberation of the process from the need to schedule meetings between the jury scientist and the lawyer. An advantage of the invention recited in claim 1 is that, in contrast to Gordon, it permits unscheduled use of the service anytime and anywhere there is access to a telephone. This advantage makes the invention of claim 1 far more convenient, useful, and able to be used in far more cases than the system described in Gordon.

The mere fact that Matsunsami disclosed the notion of saving audio messages and distributing them in a network would not have made the applicant's claim 1 obvious. There is nothing in Gordon or in Matsunsami that would have suggested enabling posting from a telephone of a performance that expresses a position of a party on an issue.

The applicant is also presenting a new claim 17 that is similar to original claim 1 and recites that the posting includes (a) uploading of audio material from a telephone and graphical material from a computer and (b) posting of timing information useful in synchronizing the audio material and graphical material in the performance. In some implementations, for example, a lawyer could indicate the timing relationship between the audio material and the graphical material that would enable a streaming digital file containing the performance to be generated. The examiner, in rejecting claim 10—which also refers to posting of timing information—cited paragraph 65 of Gordon. But that paragraph appears to say nothing about such timing information. Claim 17 is patentable because Gordon does not disclose or suggest "posting of timing information useful in synchronizing the uploaded audio material and graphical material in the performance" and therefore does not achieve a useful advantage of a legal case that is enabled by the invention of claim 17, namely the concurrence of discussion and reference to visual evidence.

Regarding claim 2, Gordon discloses ...
Regarding claim 3, Gordon discloses ...
Regarding claims 4 and 9, Gordon discloses ...
Regarding claim 6, Gordon discloses ...
Regarding claim 7, Gordon discloses ...
Regarding claim 8, Gordon discloses ...
Regarding claim 10, Gordon discloses ...
Regarding claim 11, Gordon discloses ...
Regarding claim 12, Gordon discloses ...
Regarding claim 13, Gordon discloses ...

Claim 9 and 10 are patentable for the same reasons as new claim 17. The other claims are patentable for the same reasons as claim 1.

6. Claims 5, and 14-15 are rejected under 35 U. S. C. 103(a)as being unpatentable over Gordon et al. (US Patent Application Publication 2001/0053967 Al; hereinafter Gordon) in view of Matsunsami (US Patent Application Publication 2002/0031206 Al).

Regarding claims 14 and 15, Gordon discloses a method comprising the steps of: receiving a spoken argument (para 60), storing the argument as a digital file (para 61), making the argument available electronically to users at different locations as streaming media for performance to the users (para 29), and receiving feedback from individuals at different locations with respect to the persuasiveness of the argument. (para 111).

Regarding claims 5, and 14-15, Gordon discloses a method that enables electronic posting of an audio, spoken legal argument for access by individuals at different locations. It is not explicitly stated that the audio information may be posted from a telephone. However, Matsunsami discloses an audio posting system wherein audio is posted from a telephone and provided over a computer network (1 10). Hence, at the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the method of posting audio described in Gordon, by allowing posting of audio through a telephone, in light of the teachings of Matsunsami, in order to allow telephones and computers to be used as transmittal terminals through the Internet so that a voice file can be distributed to a plurality of computer terminals from a telephone

Claim 5 has been cancelled without disclaimer or prejudice.

Claims 14 and 15 are patentable for at least the same reasons as claim 1.

The fact that the applicant has replied to certain comments of the examiner does not mean that the applicant concedes any of the other comments of the examiner. The fact that the applicant has argued certain reasons for the patentability of a claim does not mean that there are not other good reasons for patentability of that claim or other claims.

Enclosed is a check in the amount of $465.00 for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050, reference no. 13378-002001.

Respectfully submitted,

Date: 9/17/3

David L. Feigenbaum
Reg. No. 30,378

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

20726231